

SUPREME COURT, U. S.

U.S. Supreme Court, U.S.

FILED

JAN 15 1968

HENRY DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1967

No. 71

JAMES P. CARAFAS, Petitioner,

vs.

J. EVIN LaVALLEE, Warden

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT.**

REPLY BRIEF

**JAMES J. CALLY,
Attorney for Petitioner,
150 Broadway,
New York, New York.**

WO 4-5781

Supreme Court of the United States

OCTOBER TERM, 1967

No. 71

JAMES P. CARAFAS, Petitioner,

vs.

J. EVIN LAVALLEE, Warden

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF

Petitioner's Completion of the Full Term of the State Court Judgment of Conviction Does Not Deprive Him of His Constitutional Guaranties

The first point of the respondent's brief presents a novel argument and a classical example of the illogical legal conclusions possible under that rationale, to wit; that even where a clear violation of a person's constitutional rights has been shown, the matter should not be of any concern to this Court nor should it take cognizance of the irregularity *now* because the petitioner has completed the term

of judgment of conviction and is not in actual or constructive custody thereby rendering the issues raised as "Academic" to the parties.

The facts are indisputable in so far as the petitioner has been fully discharged as of March 6, 1967. It is pointed out however, that Federal Habeas Corpus had been interposed some two years earlier. The quagmire of legal morass that intervened slowed down the processing of the same to the Supreme Court. At present, the case of *Parker v. Ellis*, 362 U. S. 574, appears to be the prevailing case law; and the dissent by Mr. Chief Justice Warren and Justice Douglas indicates quite strongly the frustrative occurrences and the many problems arising therefrom when the door is slammed shut to a petitioner.

The petitioner is left in the mire of instability when the moot point is set forth for the first time. He can no longer vote in any election in New York State, and, for that matter, in a least 34 states, he can no longer serve as a juror nor engage in certain types of businesses where licenses are required. His economic and political status has been stripped from him. A blow of this nature crushes and destroys the hopes of one seeking to establish his constitutional guarantees. The petitioner in the instant matter, has exhausted all of his remedies in the State and Federal processes, save this last hope, Federal Habeas Corpus.

In the matter of the *State of Tennessee v. Harris*, D. C. Term, 1965, 236 F. Supp. 780, the decision holds as a condition that the petitioner must be in custody at the time he files a Federal Habeas Corpus. The petitioner in the case at bar, was in custody at the time of filing. The District Judge while denying the relief, issued probable cause. Subsequently, the Circuit Court of Appeals for the Second Circuit affirmed such findings. Therefore, the petitioner's last resort was and is the Supreme Court of the United States.

In the case of *Pollard v. United States*, 352 U. S. 354, where relief was sought under Title 28, Section 2255, to correct a sentencing and requiring the custody of the petitioner therein, the Court by its rationale arrived at a different conclusion and said it had the power and authority to rectify the error, although the petitioner therein was not in custody.

In a manner of speaking the petitioner herein is being victimized by reason of his adherence to the law, and his most cherished right under our system is being challenged by the question of mootness.

The Attorney-General of the State of New York knew from the very inception of the situation in responding to the certiorari pursued by this petitioner, and did nothing. Moreover, it did not assert the question of mootness of the issues raised at any time heretofore. Now, upon the granting of the certiorari, it elects to bring out this matter for the first time. The petitioner has been made to spend much money and time in the preparation of the appeal to this Court, and it would seem a grave injustice to say now that it now is a moot question and therefore not within the Court's jurisdiction to hear. It would seem that the Attorney-General's office toyed with the sensibilities and emotions of the petitioner. Now, at long last, at a time when he might have been vindicated after a trying ordeal over a period of eight years; it would seem cruel justice to say that he can not obtain the relief which he has so long sought. The Court should not countenance such a travesty on justice.

When life and liberty is at stake, the person must look to this Court to search out remedies, ancient or contemporary, to insure that the concept of due process has prevailed throughout all stages of a criminal proceedings. The importance of this underlying philosophy of our system of criminal jurisprudence becomes more conspicuous with each passing day as one reflects upon the value of

individual rights by contrast with certain areas where totalitarianism has submerged human rights to a point of invisibility.

Today, we find the Supreme Court of the United States expanding upon the substantive and procedural rights afforded and guaranteed by the due process clause of the Constitution not only in regard to trial proceedings but more particularly to post trial remedies after a judgment of conviction has been entered.

In order to insure fair and impartial justice to all persons, it behooves our highest court to interpret the laws, as has been done in many other instances, and expand its legal meaning to meet the challenge and modern concept of justice, rather than to dismiss the matter for mootness because past precedents have placed a limitation thereon for the society of that time. Our enlightened society cries out for justice, complete and final, and its cries must be answered by this Court as the last refuge to which this petitioner has recourse.

Judicial review of the alleged violations of the constitutional safeguards inescapably impose upon this Court an exercise of judgment upon the whole course of proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English speaking peoples, and these immutable principals of justice should not be disregarded by technical definitions or laws which have outlasted their utility.

In this case, necessity for a remedy, not available elsewhere, should be available here in the Supreme Court of the land. Whenever claims of the violation of due process have been alleged, it is only fitting and proper that the Court invoke and extend its powers to hear the plea of an aggrieved party to review the record and right the wrong.

The statute relied upon to exclude the hearing of this case is merely procedural and permits flexibility of legal

interpretation to permit redress to one who has faith in the principals of true justice and seeks an equitable determination and thereby perhaps regain the precious rights which have been lost by this petitioner.

The Court should not disregard the alleged assault upon the constitutional rights of this petitioner and the equities are such as to demand that some relief be accorded him.

JAMES J. CALLY,
Attorney for Petitioner.